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Date 12/14/95

Signature [REDACTED]

NOV - 1 1995

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(9) of the Internal Revenue Code.

You were created on [REDACTED] to provide certain employee welfare benefits to employees of [REDACTED], the employer. The plan currently provides benefits for full-time employees which is defined as employees who work at least [REDACTED] hours a year.

Your plan provides life benefits of [REDACTED] times compensation for each employee receiving less than \$[REDACTED] in annual compensation. The plan provides life benefits of [REDACTED] times compensation for employees earning more than \$[REDACTED]. Benefits are provided through universal or whole-life insurance policies, which includes cash surrender values and loan features.

The plan also provides severance benefits which are determined by years of participation in the plan. Benefits are determined as follows:

<u>Years of Participation</u>	<u>Percentage of Prior years compensation</u>
1 year	%
2 years	%
3 years	%
4 years	%
5 years	%
6 years	%
7 years	%
8 years	%
9 years	%
10 or years	%

The plan has [REDACTED] participants. An employee census for [REDACTED] indicates the following compensation was paid to plan participants:

[REDACTED]

<u>Name</u>	<u>Compensation</u>	<u>Highly Compensated</u>
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[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]
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Your trustees are [REDACTED] and [REDACTED]. Upon termination, the trustees may direct a complete distribution of assets, and income, held by the Trust to plan participants for purposes of providing benefits to the currently employed employees of the employer in the same ratio in which they were originally contributed based upon the compensation of each participant and vesting rights determined by the total years of service that each participant has completed with the participating employer.

Section 501(c)(9) of the Code describes voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-3(a) of the Income Tax Regulations provides that a voluntary employees' beneficiary association is not operated for the purpose of providing life, sick, accident, or other benefits unless substantially all of its operations are in furtherance of the provision of such benefits. Further, an organization is not described in this section if it systematically and knowingly provides benefits (of more than a de minimis amount) that are not permitted by paragraphs (b), (c), (d), or (e) of this section.

Section 1.501(c)(9)-3(b) of the regulations provides that the term "life benefit" means a benefit (including a burial benefit or a wreath) payable by reason of the death of a member or dependent. The term "life benefit" does not include a pension, annuity or similar benefit.

Section 1.501(c)(9)-3(f) of the regulations provides that the term "other benefits" does not include any benefit that is similar to a pension or annuity payable at the time of mandatory or voluntary retirement. For purposes of section 501(c)(9) and

[REDACTED]

these regulations, a benefit will be considered similar to that provided under a pension, annuity, stock bonus or profit-sharing plan if it provides for deferred compensation that becomes payable by reason of the passage of time, rather than as the result of an unanticipated event.

Section 1.501(c)(9)-4(a) of the regulations provides that no part of the net earnings of an employees' association may inure to the benefit of any private shareholder or individual other than through the payment of benefits permitted by 1.501(c)(9)-3. Whether prohibited inurement has occurred is a question to be determined with regard to all of the facts and circumstances.

In Sunrise Construction Company, Inc. v. Commissioner, 52 T.C.M. 1358 (1987) the employer established a trust to offer employer-funded life benefits equal to three times employee compensation and disability benefits that equalled employee compensation for the employer's four employees. Upon termination the plan provided that residual assets would be used to provide life, sick, or other benefits for participants or to provide cash to participants in proportion to compensation. The Tax Court concluded that the organization did not meet the requirements for exemption under section 501(c)(9) of the Code since the plan was operated for the benefit of the company's president and the incidental coverage of other employees was "merely a cost of securing the anticipated tax-exempt status." The court considered the following factors in upholding the denial of exemption by the Service (1) the amounts contributed far exceeded the amounts reasonable for the stated purposes of the contributions by the employer; (2) excess funds were invested at the direction of the shareholder in a nonfiduciary manner; and (3) terms of the organizing agreement were not honored upon termination of the plan.

Whether a VEBA meets the requirement that no part of its net income can inure to the benefit of any individual is a question to be determined with regard to all the facts and circumstances. Prohibited inurement arises when a VEBA serves the use or benefit of an individual other than through the proper performance of functions characteristic of organizations described in section 501(c)(9). A VEBA functions primarily as a cooperative device for pooling funds and distributing risks over and benefits to a defined group of employees sharing an employment-related common bond. While an organization may provide benefits to promote the common welfare of an association of employees in a manner consistent with section 501(c)(9), the inurement proscription bars the tax-exempt treatment of an organization predominantly organized and operated to promote the interest of an individual

standing in relationship to the organization as an investor for private gain.

A shareholder-employee maintains a posture incompatible with the inurement proscription if the shareholder-employee has effective control over the contributing employer. A limited membership in combination with the allocation of a dominant share of benefits and assets to a shareholder-employee, indicates that the trust is organized and operated for the benefit of the shareholder-employees and not for any employee group. Prior to termination, the trust accumulates funds mainly for the current benefit of its shareholder-members. With effective control over the contributing employers, the shareholder-employees have the power to terminate their participation at will, thus directing the distribution of their portion of trust assets. Under these circumstances, a VEBA functions substantially as an investment fund for the direct personal and private benefit of the shareholder-employees. An organization functioning in this manner is inconsistent with the exempt purpose of an association of employees as opposed to the welfare of a single employee.

While actively participating in the trust, shareholder-employees and other highly-compensated employees, receive more than 50% of the benefits provided by their employer. As trustees of the trust, your owner-operators, can terminate the trust at any time. Upon termination, the shareholder-employees will in all cases receive more than 50% of the assets in that employer's account. Under these circumstances, you function primarily as an investment fund for the direct personal and private benefit of the shareholder-employees. This constitutes prohibited inurement within the meaning of section 1.501(c)(9)-4 of the regulations.

Based on the foregoing, we rule that you are not exempt from federal income tax as an organization described in section 501(c)(9) of the Code.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

[REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

You will expedite our receipt of your reply by using the following address:

Internal Revenue Service
[REDACTED]
1111 Constitution Ave., NW
Washington, DC 20224
Attention: [REDACTED]

Sincerely,

[REDACTED]
Chief, Exempt Organizations
Technical Branch 3

cc: [REDACTED]

cc: [REDACTED]

10/26/95

10/30/95